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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

APPLE.016A/P2815US1

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on November 23, 2009

Signature

Typed or printed name Robert F. Gazdzinski

Application Number

10/728,185

Filed

12/03/2003

First Named Inventor

Jerrold V. Hauck, et al.

Art Unit

2416

Examiner

Cehic, Kenan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 39,990

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

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11/23/2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

5 Applicant: Jerrold V. Hauck, et al. App. No.: 10/728,185
 Examiner: Cehic, Kenan Group Art Unit: 2416
 Filing date: December 3, 2003
 For: **FLY-BY AND ACK-ACCELERATED ARBITRATION FOR BROADCAST**
 PACKETS

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir or Madam:

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In response to the Office Action dated June 23, 2009 ("Office Action"), Applicant herein requests a pre-appeal brief review of the above-identified application as follows:

20 **I. CLEAR ERROR IN REJECTING APPLICANT'S CLAIMS 1, 18, 31, 38, 43
AND 49 INVENTIONS OVER HAUCK ET AL. IN VIEW OF DUCKWALL; AND
CLAIMS 23, 26, 27 AND 30 OVER HAUCK, DUCKWALL '481 AND FURTHER IN
VIEW OF HENRY ET AL.**

25 Per page 4 of the Office Action, each of independent Claims 1, 18, 31, 38, 43 and 49
were rejected over U.S. Patent No. 6,356,558 (hereinafter "Hauck") in view of U.S. Patent No.
5,495,481 (hereinafter "Duckwall '481"). In addition, per page 12 of the Office Action, Claims
23, 26, 27 and 30 were rejected in view of Hauck, Duckwall '481 and U.S. Patent Pub. No.
2004/0151153 (hereinafter "Henry et al").

30 Claims 1, 18, 23, 26, 27, and 30 recite the element "*bogus ack packet*"; Claims 31 and 43
recite the element "*false acknowledgement packet*"; and Claims 38 and 49 recite the element
"*false response packet*". The Examiner alleges that each of these recited terms is taught by the
Duckwall '481 reference at Col. 6, lines 20 – 50. **See pages 11 – 12 of the Office Action.** Col. 6,
lines 20 – 50 of Duckwall '481 are reproduced in relevant part below:

35

40 *"If a node determines that an acknowledge packet has been transmitted, repeated,
or received, that node need not remain idle for the subaction gap time T_{sa} and
may begin arbitration immediately.... According to the P1394 serial bus standard,
acknowledge packets are eight bits long, wherein data packets are at least sixty-
four bits long.... For one embodiment, if the counted number of bits for a packet is
equal to eight, the node identifies that an acknowledge packet has been
transmitted and immediately begins the arbitration phase of the next
subaction...."*

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Accordingly, it appears that the Examiner is equating the terms “*bogus ack packet*”; “*false acknowledgement packet*”; and “*false response packet*” with Duckwall ‘481’s teaching of an “*acknowledgement packet*”.

Applicant notes that during patent examination, the claims must be interpreted as broadly as their terms reasonably allow. See e.g., *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004) (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation in light of the specification.). See also MPEP § 2111.01. Furthermore, the pending claims must be “*given their broadest reasonable interpretation consistent with the specification.*” {emphasis added} See, e.g. MPEP § 2111 and the Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

For the purposes of conciseness, only the limitation “*bogus ack packet*” is addressed herein; however, Applicant believes similar logic applies equally to the other recited claim limitations listed above. Applicant submits that the Examiner’s interpretation of the term “*bogus ack packet*” as equating with the term “*acknowledge packet*” is entirely inconsistent with not only the plain meaning of the term “*bogus ack*”, but with Applicant’s specification as filed as well, and accordingly constitutes a clearly erroneous interpretation by the Examiner. Paragraph [0026] of Applicant’s specification as filed sets forth:

“*The bogus ack packet does not have to follow the prior-art convention that the second nibble is the complement of the first nibble. By not having a second nibble that is the compliment of the first nibble, the bogus ack packet causes the link hardware to filter it out so that it has no effect at that level. However, by definition in 1394, the PHY recognizes any 8-bit packet as an ack packet for the purposes of acceleration. Thus the present invention utilizes a packet that meets the requirements for recognition at one physical and/or transaction layer, but not at a different layer.*” {emphasis added}

Accordingly, Applicant’s specification as filed clearly differentiates and distinguishes from prior art “ack” (or acknowledgement) packets as taught by, *inter alia*, Duckwall ‘481. The Examiner’s interpretation is accordingly, entirely inconsistent with Applicant’s specification as filed as set forth above. The Examiner has completely and erroneously read the term “*bogus*” out of each of Applicant’s rejected claims.

Applicant submits that Hauck and Henry are deficient in this regard as well, as noted by the Examiner at, *inter alia*, page 11 of the Office Action.

Applicant therefore respectfully submits that the Examiner has committed clear error in rendering obvious Applicant’s Claim 1, 18, 23, 26, 27, 30, 31, 38, 43 and 49 inventions by interpreting Applicant’s claim language in a way that is both: (1) inconsistent with the plain meaning of the terms; and (2) inconsistent with Applicant’s specification as filed.

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II. CONCLUSION


In summation, Applicant respectfully submits that the Examiner has committed clear and reversible error in at least those instances described above for each and every independent claim currently pending. Accordingly, Applicant respectfully requests that the Final Rejection for the above-identified case be withdrawn, and that the case be passed to allowance, or a subsequent Office communication correcting the above highlighted deficiencies be issued.

Respectfully submitted,

GAZDZINSKI & ASSOCIATES, P.C.

Dated: November 23, 2009

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